

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGELO ORTIZ,

Plaintiff,

-v-

DEPARTMENT OF CORRECTION OF THE CITY
OF NEW YORK, *et al.*,

Defendants.

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No. 08 Civ. 2195 (RJS) (HBP)

ORDER ADOPTING REPORT AND
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

On March 5, 2007, *pro se* Plaintiff Angelo Ortiz filed a complaint arising from allegedly unsanitary conditions to which he was subjected while incarcerated on Rikers Island. (Doc. No. 2.) The original complaint named New York City's Department of Correction (the "NYCDOC"), two Jane Does, and three individual correction officers as Defendants.

On June 17, 2008, the United States Marshals served the complaint on the NYCDOC but were unable to serve the individual Defendants, as Plaintiff inadequately identified them in his complaint. (Doc. Nos. 3-5, 7.) On July 7, 2008, the Court ordered Plaintiff to show cause for failing to serve his complaint within 120 days of its filing. (Doc. No. 6.) Plaintiff responded that he needed assistance identifying the individual Defendants. (Doc. No. 9.) The Court found that Plaintiff had shown good cause and ordered the NYCDOC to provide Plaintiff with the individual Defendants' names and addresses. (Doc. No. 14) The Court also ordered Plaintiff to file an amended complaint by no later than 30 days after receiving the identifying information and to request a service package, fill out the required forms, and provide the Marshals with the documents necessary to effectuate service. (*Id.*) After the Court gave Plaintiff a series of

deadlines and extensions by which to file his amended complaint, Plaintiff filed an amended complaint on February 5, 2009. (Doc. No. 23.)

On March 27, 2009, the Court referred the action to the Honorable Henry B. Pitman, Magistrate Judge, for general pre-trial management, non-dispositive motions, and dispositive motions. (Doc. No. 26.) On April 27, 2009, Magistrate Judge Pitman granted Plaintiff leave to file a second amended complaint (the "SAC"). (Doc. No. 28.) Plaintiff did so on May 6, 2009. (Doc. No. 30.) On May 11, 2009, Magistrate Judge Pitman directed Plaintiff to serve his SAC by June 30, 2009. (Doc. No. 29.) Plaintiff did not serve the individual Defendants until November 12, 2009. (Doc. Nos. 42-45.) The Pro Se Office, however, informed Magistrate Judge Pitman that it had inadvertently failed to respond to Plaintiff's March 11, 2009 and August 3, 2009 requests for service packages and did not send service packages to Plaintiff until October 23, 2009. (Report at 8.)

By notice of motion dated September 9, 2009, the NYCDOC moved to dismiss the SAC, pursuant to Federal Rules 4(m), 41(b), and 12(b)(6) of the Federal Rules of Civil Procedure. (Doc. No. 34.) The motion became fully submitted on September 23, 2009. (Doc. No. 36.)


On July 23, 2010, Magistrate Judge Pitman issued a Report and Recommendation (the "Report") recommending that Defendant's motion be granted on consent with respect to the NYCDOC and denied in all other respects. (Doc. No. 47.) In the Report, Magistrate Judge Pitman advised the parties that failure to file timely objections within fourteen days from service of the Report would constitute a waiver of those objections. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). No party has filed objections to the Report, and the time to do so has expired. *Cf. Frank v. Johnson*, 968 F.2d 298 (2d Cir. 1993).

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After conducting a thorough review of the record, the Court finds that Magistrate Judge Pitman's well-reasoned and persuasive Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety. For the reasons set forth therein, IT IS HEREBY ORDERED that Defendant's motion to dismiss be granted on consent with respect to the NYCDOC and denied in all other respects. With Defendant's motion resolved, this case remains referred to Magistrate Judge Pitman.

The Clerk of the Court is directed to terminate the motion located at Doc. No. 34.

SO ORDERED.

Dated: August 10, 2010
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE